

National Credit Union Administration

§ 707.10

(iii) Telephone response machines.

(2) *Indoors signs.* (i) Signs inside the premises of a credit union (or the premises of a share or deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

(ii) If a sign exempted by paragraph (e)(2) of this section states a rate of return, it shall:

(A) State the rate as an "annual percentage yield," using that term or the term "APY." The sign shall not state any other rate, except that the dividend rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising members to contact an employee for further information about applicable fees and terms.

(3) *Newsletters.* (i) Newsletters sent by a credit union to existing members only are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

(ii) If a newsletter exempted by paragraph (e)(3) of this section states a rate of return, it shall:

(A) State the rate as an "annual percentage yield," using that term or the term "APY." The newsletter shall not state any other rate, except that the dividend rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising members to contact an employee for further information about applicable fees and terms.

(f) *Additional disclosures in connection with the payment of overdrafts.* Credit unions that promote the payment of overdrafts in an advertisement must include in the advertisement the disclosures required by § 707.11(b) of this part.

(Approved by the Office of Management and Budget under control number 3133-0134)

[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 13436, Mar. 22, 1994; 61 FR 114, Jan. 3, 1996; 63 FR 71575, Dec. 29, 1998; 70 FR 72898, Dec. 8, 2005]

§ 707.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of TISA (12 U.S.C. 4309) contains the provisions relating to administrative sanctions for failure to comply with

the requirements of TISA and this part.

(b) *Civil liability.* Section 271 of TISA (12 U.S.C. 4310) contains the provisions relating to civil liability for failure to comply with the requirements of TISA and this part; Section 271 is repealed effective September 30, 2001.

(c) *Record retention.* A credit union shall retain evidence of compliance with this regulation for a minimum of two years after the date disclosures are required to be made or action is required to be taken.

(Approved by the Office of Management and Budget under control number 3133-0134)

[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 13436, Mar. 22, 1994; 61 FR 114, Jan. 3, 1996; 63 FR 71575, Dec. 29, 1998]

§ 707.10 Electronic communication.

(a) *Definition.* Electronic communication means a message transmitted electronically between a credit union and a member in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a credit union may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When consent is required.* Under the E-Sign Act, a credit union must obtain a member's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under §§ 707.4(a)(2) and 707.8 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A credit union that uses electronic communication to provide disclosures required by this part must:

(1) Send the disclosure to the member's electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and

(i) Alert the member of the disclosure's availability by sending a notice to the member's electronic address (or to a postal address, at the credit

union's option). The notice must identify the account involved (if applicable) and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the member of the disclosure, whichever comes later.

(3) Exceptions. A credit union need not comply with paragraph (d)(2)(ii) of this section for disclosures required under § 707.4(a)(2), and need not comply with paragraphs (d)(2)(i) and (ii) of this section for disclosures required under § 707.8.

(e) *Redelivery*. When a disclosure provided by electronic communication is returned to a credit union undelivered, the credit union must take reasonable steps to attempt redelivery using information in its files.

(f) *Entities other than a credit union*. A person other than a credit union that is required to comply with this part may use electronic communication in accordance with the requirements of this section, as applicable.

[66 FR 33163, June 21, 2001]

§ 707.11 Additional disclosure requirements for credit unions advertising the payment of overdrafts.

(a) *Periodic statement disclosures*—(1) *Disclosure of Total Fees*. (i) Except as provided in paragraph (a)(2) of this section, if a credit union promotes the payment of overdrafts in an advertisement, the credit union must separately disclose on each periodic statement:

(A) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient funds and the account becomes overdrawn; and

(B) The total dollar amount for all fees imposed on the account for returning items unpaid.

(ii) The disclosures required by this paragraph must be provided for the statement period and for the calendar year to date, for any account to which the advertisement applies.

(2) *Communications not triggering disclosure of total fees*. The following communications by a credit union do not

trigger the disclosures required by paragraph (a)(1) of this section:

(i) Promoting in an advertisement a service for paying overdrafts where the credit union's payment of overdrafts will be agreed upon in writing and subject to part 226 of this title (Regulation Z);

(ii) Communicating, whether by telephone, electronically, or otherwise, about the payment of overdrafts in response to a member-initiated inquiry about share accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, an automated teller machine (ATM), or a credit union's Internet site, is not a response to a member-initiated inquiry for purposes of this paragraph;

(iii) Engaging in an in-person discussion with a member;

(iv) Making disclosures that are required by Federal or other applicable law;

(v) Providing a notice or including information on a periodic statement informing a member about a specific overdrawn item or the amount the account is overdrawn;

(vi) Including in a share account agreement a discussion of the credit union's right to pay overdrafts;

(vii) Providing a notice to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or providing a general notice that items overdrawing an account may trigger a fee; or

(viii) Providing informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service.

(3) *Time period covered by disclosures*. A credit union must make the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after a credit union advertises the payment of overdrafts. A credit union may disclose total fees imposed for the calendar year by aggregating fees imposed since the beginning of the calendar year, or since the beginning of the first statement period